

K. BRADLEY CARR - 14428  
LAW OFFICES OF JAMES H. WOODALL, PLLC  
Attorneys for respondent  
10808 River Front Parkway, Suite 175  
South Jordan, Utah 84095  
Telephone: (801) 254-9450  
email: [bc@utahtrustee.com](mailto:bc@utahtrustee.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<b>JASON LUNT, an individual,</b>  Plaintiff,  vs.  <b>DIRECT MORTGAGE CORPORATION; NATIONSTAR MORTGAGE; JAMES H. WOODALL, Trustee, and DOES 1-10.</b>  Defendant.	<b>MOTION TO DISMISS</b>  Civil No. 1:13-cv-00065  Judge David O. Nuffer
--	--

Pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, defendant James H. Woodall moves the Court for dismissal of plaintiffs' Complaint on the grounds that it fails to state a cause of action upon which relief can be granted.

A Memorandum in Support is filed herewith.

DATED this 15 day of October 2013.

*/S/ K. Bradley Carr*  
K. BRADLEY CARR  
Counsel for James H. Woodall

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served in the manner indicated below on the 15 day of October 2013 to those indicated below:

Judson T. Pitts 1935 East Vine Street, Suite 140 Holladay, Utah 84121	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand-delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed
Daniel K. Brough 3165 E Millrock Dr 5 <sup>th</sup> Fl Salt Lake City, Utah 84121	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand-delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed
Anthony C. Kaye Steven D. Burt 201 South Main, Suite 800 Salt Lake City, Utah 84111	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand-delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed

/S/ K. Bradley Carr

K. BRADLEY CARR - 14428  
LAW OFFICES OF JAMES H. WOODALL, PLLC  
Attorneys for respondent  
10808 River Front Parkway, Suite 175  
South Jordan, Utah 84095  
Telephone: (801) 254-9450  
email: bc@utahtrustee.com

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

<p><b>JASON LUNT, an individual,</b> Plaintiff, vs. <b>DIRECT MORTGAGE CORPORATION;</b> <b>NATIONSTAR MORTGAGE; JAMES H.</b> <b>WOODALL, Trusee, and DOES 1-10.</b> Defendant.</p>	<p><b>MEMORANDUM IN SUPPORT OF MOTION TO DISMISS</b>  Civil No. 1:13-cv-00065  Judge David O. Nuffer</p>
--	--

---

Defendant James H. Woodall (“Woodall”) submits the following Memorandum in Support of his Motion to Dismiss, filed herewith:

**STANDARD OF REVIEW**

Rule 12(b)(6) of the Utah Rules of Civil Procedure requires a plaintiff to allege facts which, if true, would provide adequate grounds for relief. *Tuttle v. Olds*, 155 P.3d 893 (Utah App. Court). As to Woodall, plaintiff’s complaint fails to meet this standard, and must therefore be dismissed.

## STATEMENT OF FACTS

Woodall was appointed as substitute trustee by Nationstar Mortgage, LLC. Plaintiff subsequently filed this action which alleges eighteen causes of action. Only two of those causes of action are directed at Woodall, as trustee: the seventeenth cause of action entitled "Declaratory Relief: Trustee's Power of Sale Under U.C.A. 57-1-23 Suspended or Invalidated by Void Contract/Nationstar's Investigation" and the eighteenth cause of action entitled "Injunctive Relief Pursuant to Rule 65(a) and (b)." Essentially, plaintiff is requesting that Woodall be enjoined from exercising his power of sale under U.C.A. 57-1-23.

## ARGUMENT

First, although labeled as such, the substance of the two causes of action applicable to Woodall are not causes of action at all, but remedies. No allegation is made that Woodall has engaged or imminently will engage in any wrongful conduct.

Section 57-1-23 of the Utah Code makes it clear that, "at the option of the beneficiary, a trust deed may be foreclosed. . . ." (emphasis added). Nationstar Mortgage is the beneficiary in this case. Therefore, Woodall, without Nationstar's direction, does not have the right to foreclose on the property. If the Court imposes an injunction against Nationstar, then Nationstar cannot request that Mr. Woodall initiate foreclosure proceedings. Thus, Mr. Woodall is an unnecessary party to this action.

"An injunction should issue only where the intervention of a court of equity is essential in order effectually to protect property rights against injuries otherwise irremediable."

*Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, (1982). Plaintiff appears to acknowledge in paragraph 123 of his Amended Complaint that Woodall is not legally authorized to foreclose on his own. An injunction against Nationstar Mortgage preventing further foreclosure proceedings would essentially divest Woodall of his authority to act as trustee. Thus, even assuming all of the facts pled are true, an injunction against Woodall is not essential to protect Plaintiff's property rights.

#### **CONCLUSION**

Woodall requests that the Court dismiss all claims brought against him in this action.

DATED this 15 day of October 2013.

/S/ K. Bradley Carr  
K. BRADLEY CARR  
Counsel for James H. Woodall

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served in the manner indicated below on the 15 day of October 2013 to those indicated below:

Judson T. Pitts  
1935 East Vine Street, Suite 140  
Holladay, Utah 84121

[ ] U.S. Mail, postage prepaid  
[ ] Hand-delivery  
[ ] Facsimile  
[ ] Email  
 E-filed

Daniel K. Brough  
3165 E Millrock Dr 5<sup>th</sup> Fl  
Salt Lake City, Utah 84121

[ ] U.S. Mail, postage prepaid  
[ ] Hand-delivery  
[ ] Facsimile  
[ ] Email  
 E-filed

Anthony C. Kaye  
Steven D. Burt  
201 South Main, Suite 800  
Salt Lake City, Utah 84111

[ ] U.S. Mail, postage prepaid  
[ ] Hand-delivery  
[ ] Facsimile  
[ ] Email  
 E-filed

/S/ K. Bradley Carr